

DIRK KEMPTHORNE
GOVERNOR



GAVIN M. GEE
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P. O. BOX 83720
BOISE ID 83720-0031
<http://www2.state.id.us/finance/dof.htm>

June 16, 2000

Re:
Request for "No Enforcement Action" Letter
File No. 18-413.0

Dear M

This is in response to your letter requesting that the Department take a "no enforcement" position regarding the options granted to three Idaho employees and two non-employee board members by (Company). It is our understanding that the Company granted options to the aforementioned individuals without filing for an exemption under Idaho Code Section 30-1434(1)(k). According to your letter, the Company intends to offer rescission and file a Plan in compliance with Idaho Code Section 30-1434(1)(k).

Our Department has some concern regarding the rescission agreement previously submitted given the unique circumstances in this case. Prior to pursuing this course, our Department would like to call your attention to another exemption that may remedy this situation. It appears that the Company may be able to claim the aforementioned transaction as an exempt transaction under Idaho Code Section 30-1435(1)(i).

Idaho Code Section 30-1435(1)(i) states:

Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons in this state other than those designated in paragraph (h) of subsection (1) of this section during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if

- (i) the seller reasonably believes that all buyers are purchasing for investment and,
- (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer.

Banks and S&L's (208) 332-8005
Credit Unions (208) 332-8003
Money Transmitters (208) 332-8003
Supporting Services (208) 332-8001

PHONE: (208) 332-8000
FAX: (208) 332-8098
Director's Fax: (208) 332-8097
Securities Fax: (208) 332-8099

Securities (208) 332-8004
Mortgage Companies (208) 332-8004
Finance Companies (208) 332-8002
Collection Agencies (208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

Provided the aforementioned transaction is eligible under Idaho Code Section 30-1435(1)(i), it appears that this self-executing exemption would remedy this situation. If you have questions regarding this matter, please contact the undersigned.

Sincerely,

Ax (file copy)

Nancy C. Ax
Securities Examiner

May 30, 2000
Via Hand Delivery

Ms. Nancy C. Ax
State of Idaho
Department of Finance
700 West State Street
Boise, Idaho 83720-0031

RECEIVED
MAY 30 2000
DEPARTMENT OF FINANCE

Re:
Request for "No Enforcement Action" Letter
File No. 18-413.0

Dear Ms. Ax:

As we discussed, our client, _____ an Idaho limited liability company (the "Company"), has granted, or agreed to grant, options to purchase Membership Units of the Company to three Idaho employees without filing for an exemption under Idaho Code Section 30-1434(a)(k). Those employees, their position, and options are as follows:

<u>Name</u>	<u>Position</u>	<u># of Units</u>	<u>Exercise Price</u> <u>Per Unit</u>
	Sales Manager	5,000	\$0.50
	Marketer	500	\$0.50
	General Manager,	100,000	\$0.50
	Division		

The grants were made pursuant to the _____ Non-qualified Membership Unit Plan (the "Plan"). A copy of the Plan is also enclosed herein. The Plan was adopted by _____ to be effective in December 1999. The written documentation for the grants, however, has not yet been signed by the Company or delivered to the grant recipients, and no options

Bill Blessing
May 26, 2000
Page 2

have yet been exercised. I have enclosed a copy of the rescission letter that will be provided to the grant recipients with the written documentation for the grants.

The Company is now filing the Plan pursuant to Idaho Code Section 30-1434(1)(k) and respectfully requests a "no enforcement action" position from the Department of Finance regarding the options to Idaho employees.

Furthermore, two Idaho members of the Management Board were issued options to purchase Membership Units of the Company. Those individuals and options are as follows:

<u># of Units</u>	<u>Exercise Price Per Unit</u>
25,000	\$0.50
25,000	\$0.50

Both _____ and _____ were involved in the formation of the Company and have been actively involved with the management of the business. The Company also respectfully requests a "no enforcement action" position from the Department of Finance regarding the options to the two Idaho board members.

Enclosed is the required \$50.00 review fee. Please call me if you have any questions regarding this claim for exemption.

Very truly yours,

Enclosures

May 26, 2000

[NAME]
[ADDRESS]
[CITY, STATE ZIP]

RECEIVED

MAY 30 2000

DEPARTMENT OF FINANCE

Re: Rescission Offer Concerning Option to Purchase Membership Units of

Dear [NAME]:

During December 1999, (the "Company") granted you an option to purchase Membership Units in the Company. That option was granted pursuant to a plan adopted by the Company to help create incentives for employees and to help retain employees. The Company's records indicate that you have not yet exercised your option.

Unfortunately, the Company did not file its plan with the Idaho Department of Finance prior to granting you your option, as was required by the Idaho Securities Act. Accordingly, the Idaho Department of Finance and the Company have determined that it is best to offer you the opportunity to rescind your option pursuant to the Idaho Securities Act.

Consequently, the Company hereby offers you the opportunity to rescind your option to purchase Membership Units of the Company. Should you decide to accept this rescission offer, please sign and return this letter where indicated stating your desire to rescind. If you choose to rescind, upon receipt of your written rescission request you will be released from all contractual obligations related to the option.

If you decide you do not want to rescind your option, please sign this letter where indicated stating that, being fully advised that the original grant of your option may not comply with Idaho securities laws, you nevertheless choose to retain your option. If you chose to retain your option, your option remains in effect and you may exercise it according to its terms.

Please call me if you have any questions concerning the Company's offer of rescission contained in this letter. Please contact your attorney or other professional advisor if you have questions concerning your decision to rescind or to retain your option to purchase Membership Units of the Company.

Very truly yours,

[NAME]
May 26, 2000
Page 2

TO RETAIN YOUR OPTIONS:

I hereby acknowledge receipt of the Company's rescission offer contained in this letter, and represent that I have had the opportunity to discuss this matter with my attorney and other professional advisors. After careful consideration I hereby DECLINE the Company's rescission offer contained in this letter. I acknowledge that I am waiving my rights to sue the Company under the securities laws of the State of Idaho with respect to the Company's failure to register the securities or to file for exemption therefrom.

Dated: _____

(Signature)

Name: _____

Dated: _____

(Signature)

Name: _____

TO RESCIND YOUR OPTIONS:

I hereby ACCEPT the Company's rescission offer contained in this letter.

Dated: _____

(Signature)

Name: _____

Dated: _____

(Signature)

Name: _____

NON-QUALIFIED MEMBERSHIP UNIT PLAN

Effective: December 13, 1999
Termination Date: December 13, 2009

1. PURPOSES.

(a) **General Purpose.** The Company, by means of this Non-Qualified Membership Unit Plan (the "Plan"), seeks to retain the services of the group of persons eligible to receive Membership Unit Awards, to secure and retain the services of new members of this group and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

(b) **Eligible Membership Unit Award Recipients.** The persons eligible to receive Membership Unit Awards are the Employees, Members, Managers, and Consultants of the Company and its Affiliates, as provided in subsection 5.

(c) **Available Membership Unit Awards.** The purpose of the Plan is to provide a means by which eligible recipients of Membership Unit Awards may be given an opportunity to benefit from increases in value of the Membership Units through the granting of the following Membership Unit Awards: (i) Nonstatutory Membership Unit Options, (ii) Membership Unit bonuses and (iii) rights to acquire restricted Membership Units.

2. DEFINITIONS.

(a) **"Affiliate"** means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(b) **"Board"** means the Management Board of the Company.

(c) **"Code"** means the Internal Revenue Code of 1986, as amended.

(d) **"Committee"** means a committee of one or more members of the Board appointed by the Board in accordance with subsection 3(c).

(e) **"Company"** means

(f) **"Consultant"** means any person, including an advisor, (i) engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services or (ii) who is a member of the Board of Directors or Management Board of an Affiliate. However, the term "Consultant" shall not include either Managers who are not

compensated by the Company for their services as Managers or Managers who are merely paid a manager's fee by the Company for their services as Managers.

(g) ***“Continuous Service”*** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Member, Manager, or Consultant, is not interrupted or terminated. The Participant's Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Member, Manager, or Consultant or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's Continuous Service. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate will not constitute an interruption of Continuous Service. The Board or the chairman of the board of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.

(h) ***“Disability”*** means the permanent and total disability of a person within the meaning of Section 22(e)(3) of the Code.

(i) ***“Employee”*** means any person employed by the Company or an Affiliate. Mere service as a Manager or payment of a manager's fee by the Company or an Affiliate shall not be sufficient to constitute “employment” by the Company or an Affiliate.

(j) ***“Fair Market Value”*** means, as of any date, the value of the Membership Units determined in good faith by the Board.

(k) ***“Manager”*** means a member of the Management Board of the Company.

(l) ***“Member”*** means a person or entity who has been admitted to all of the rights of membership in the Company as set forth in the Operating Agreement of

(m) ***“Membership Unit”*** means a portion of the Membership Interest in the Company held by a Member as set forth in the Operating Agreement of

(n) ***“Membership Unit Award”*** means any right granted under the Plan, including a Membership Unit Option, a Membership Unit bonus and a right to acquire restricted Membership Units.

(o) ***“Membership Unit Award Agreement”*** means a written agreement between the Company and a holder of a Membership Unit Award evidencing the terms and conditions of an individual Membership Unit Award grant. Each Membership Unit Award Agreement shall be subject to the terms and conditions of the Plan.

(p) ***“Option”*** means a Membership Unit Option granted pursuant to the Plan.

(q) **"Option Agreement"** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(r) **"Optionholder"** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(s) **"Participant"** means a person to whom a Membership Unit Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Membership Unit Award.

(t) **"Plan"** means this Incentive Non-Qualified Membership Unit Plan.

(u) **"Securities Act"** means the Securities Act of 1933, as amended.

3. ADMINISTRATION.

(a) **Administration by Board.** The Board shall administer the Plan. Any interpretation of the Plan by the Board and any decision by the Board under the Plan shall be final and binding on all persons.

(b) **Powers of Board.** The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which of the persons eligible under the Plan shall be granted Membership Unit Awards; when and how each Membership Unit Award shall be granted; the provisions of each Membership Unit Award granted (which need not be identical), including the time or times when a person shall be permitted to receive Membership Units pursuant to a Membership Unit Award; and the number of Membership Units with respect to which a Membership Unit Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Membership Unit Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Membership Unit Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or a Membership Unit Award as provided in Section 12.

(iv) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company which are not in conflict with the provisions of the Plan.

4. UNITS SUBJECT TO THE PLAN.

(a) **Unit Reserve.** Subject to the provisions of Section 11 relating to adjustments upon changes in Membership Units, the Membership Units that may be issued pursuant to Membership Unit Awards shall not exceed in the aggregate one million (1,000,000) Membership Units.

(b) **Reversion of Membership Units to the Membership Unit Reserve.** If any Membership Unit Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the Membership Units not acquired under such Membership Unit Award shall revert to and again become available for issuance under the Plan. If the Company repurchases any Membership Units issued under a Membership Unit Award, the Membership Units so repurchased shall revert to and again become available for issuance under the Plan for all Membership Unit Awards.

(c) **Source of Membership Units.** The Membership Units subject to the Plan may be unissued Membership Units or reacquired Membership Units.

5. ELIGIBILITY.

(a) Except as provided in subsection (b) hereof, Options may be granted to Employees, Members, Managers, and Consultants. If otherwise eligible, an Employee, Member, Manager, or Consultant who has been granted an Option may be granted additional Options.

(b) Any Employees, Members, Managers, or Consultants that reside in a state that does not have an exemption to securities registration for the Plan shall not be eligible to participate in the Plan and shall not be granted any Options pursuant to the Plan.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be designated Membership Unit Options at the time of grant. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) **Term.** No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) **Exercise Price of an Option.** The Board shall determine the exercise price of each Option.

(c) **Consideration.** The purchase price of Membership Units acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (i) in cash at the time the Option is exercised or (ii) at the discretion of the Board at the time of the grant of the Option, or subsequently (1) by delivery to the Company of other Membership Units,

grant of the Option, or subsequently (1) by delivery to the Company of other Membership Units, (2) according to a deferred payment or other similar arrangement with the Optionholder or (3) in any other form of legal consideration that may be acceptable to the Board.

In the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement.

(d) Transferability of an Option. An Option shall be transferable to the extent provided in the Option Agreement. If the Option does not provide for transferability, then the Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(e) Vesting Generally. The total number of Membership Units subject to an Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this subsection 6(e) are subject to any Option provisions governing the minimum number of Membership Units as to which an Option may be exercised.

(f) Termination of Continuous Service. In the event an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

(g) Extension of Termination Date. An Optionholder's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of Membership Units would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in subsection 6(a) or (ii) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

(h) Disability of Optionholder. In the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his

or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period specified in the Option Agreement) or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.

(i) Death of Optionholder. In the event (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionholder's death pursuant to subsection 6(d) , but only within the period ending on the earlier of (1) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement) or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

(j) Early Exercise. The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the Membership Units subject to the Option prior to the full vesting of the Option. Any unvested Membership Units so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate.

7. PROVISIONS OF MEMBERSHIP UNIT AWARDS OTHER THAN OPTIONS.

(a) Membership Unit Bonus Awards. Each Membership Unit bonus agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Membership Unit bonus agreements may change from time to time, and the terms and conditions of separate Membership Unit bonus agreements need not be identical, but each Membership Unit bonus agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Membership Unit bonus may be awarded in consideration for past services actually rendered to the Company or an Affiliate for its benefit.

(ii) Vesting. Membership Units awarded under the Membership Unit bonus agreement may, but need not, be subject to a unit repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Participant's Continuous Service. In the event a Participant's Continuous Service terminates, the Company may reacquire any or all of the

Membership Units held by the Participant which have not vested as of the date of termination under the terms of the Membership Unit bonus agreement.

(iv) Transferability. Rights to acquire Membership Units under the Membership Unit bonus agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Membership Unit bonus agreement, as the Board shall determine in its discretion, so long as Membership Units awarded under the Membership Unit bonus agreement remain subject to the terms of the Membership Unit bonus agreement.

(b) Restricted Membership Unit Awards. Each restricted Membership Unit purchase agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of the restricted Membership Unit purchase agreements may change from time to time, and the terms and conditions of separate restricted Membership Unit purchase agreements need not be identical, but each restricted Membership Unit purchase agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Purchase Price. The Board shall determine the purchase price of restricted Membership Unit awards.

(ii) Consideration. The purchase price of Membership Units acquired pursuant to the restricted Membership Unit purchase agreement shall be paid either: (i) in cash at the time of purchase; (ii) at the discretion of the Board, according to a deferred payment or other similar arrangement with the Participant; or (iii) in any other form of legal consideration that may be acceptable to the Board in its discretion.

(iii) Vesting. Membership Units acquired under the restricted Membership Unit purchase agreement may, but need not, be subject to a unit repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

(iv) Termination of Participant's Continuous Service. In the event a Participant's Continuous Service terminates, the Company may repurchase or otherwise reacquire any or all of the Membership Units held by the Participant which have not vested as of the date of termination under the terms of the restricted Membership Unit purchase agreement.

(v) Transferability. Rights to acquire Membership Units under the restricted Membership Unit purchase agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the restricted Membership Unit purchase agreement, as the Board shall determine in its discretion, so long as Membership Units awarded under the restricted Membership Unit purchase agreement remain subject to the terms of the restricted Membership Unit purchase agreement.

8. COVENANTS OF THE COMPANY.

(a) Availability of Membership Units. During the terms of the Membership Unit Awards, the Company shall keep available at all times the number of Membership Units required to satisfy such Membership Unit Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Membership Unit Awards and to issue and sell Membership Units upon exercise of the Membership Unit Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Membership Unit Award or any Membership Units issued or issuable pursuant to any such Membership Unit Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of Membership Units under the Plan, the Company shall be relieved from any liability for failure to issue and sell Membership Units upon exercise of such Membership Unit Awards unless and until such authority is obtained.

9. USE OF PROCEEDS FROM MEMBERSHIP UNITS.

Proceeds from the sale of Membership Units pursuant to Membership Unit Awards shall constitute general funds of the Company.

10. MISCELLANEOUS.

(a) Acceleration of Exercisability and Vesting. The Board shall have the power to accelerate the time at which a Membership Unit Award may first be exercised or the time during which a Membership Unit Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Membership Unit Award stating the time at which it may first be exercised or the time during which it will vest.

(b) Member Rights. No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Membership Units subject to such Membership Unit Award unless and until such Participant has satisfied all requirements for exercise of the Membership Unit Award pursuant to its terms.

(c) No Employment or other Service Rights. Nothing in the Plan or any instrument executed or Membership Unit Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Membership Unit Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Manager pursuant to the Operating Agreement of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is organized, as the case may be.

(d) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Membership Units under any Membership Unit Award, (i) to give

written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Membership Unit Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Membership Units subject to the Membership Unit Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Membership Units. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (iii) the issuance of the Membership Units upon the exercise or acquisition of Membership Units under the Membership Unit Award has been registered under a then currently effective registration statement under the Securities Act or (iv) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on Membership Unit certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Membership Units.

(e) **Withholding Obligations.** To the extent provided by the terms of a Membership Unit Award Agreement, the Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Membership Units under a Membership Unit Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold Membership Units from the Membership Units otherwise issuable to the participant as a result of the exercise or acquisition of Membership Units under the Membership Unit Award; or (iii) delivering to the Company owned and unencumbered Membership Units.

11. ADJUSTMENTS UPON CHANGES IN MEMBERSHIP UNITS.

(a) **Capitalization Adjustments.** If any change is made in the Membership Units subject to the Plan, or subject to any Membership Unit Award, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, Membership Unit dividend, dividend in property other than cash, liquidating dividend, combination of Membership Units, exchange of Membership Units, change in company structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted in the class(es) and maximum number of securities subject to the Plan pursuant to subsection 4(a), and the outstanding Membership Unit Awards will be appropriately adjusted in the class(es) and number of securities and price per Membership Unit subject to such outstanding Membership Unit Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)

(b) Change in Control--Dissolution or Liquidation. In the event of a dissolution or liquidation of the Company, then all outstanding Membership Unit Awards shall terminate immediately prior to such event.

(c) Change in Control--Asset Sale, Merger, Consolidation or Reverse Merger. In the event of (i) a sale, lease or other disposition of all or substantially all of the assets of the Company, (ii) a merger or consolidation in which the Company is not the surviving company or (iii) a reverse merger in which the Company is the surviving company but the Membership Units outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, then any surviving company or acquiring company shall assume any Membership Unit Awards outstanding under the Plan or shall substitute similar awards (including an award to acquire the same consideration paid to the members in the transaction described in this subsection 11(c) for those outstanding under the Plan. In the event any surviving company or acquiring company refuses to assume such Membership Unit Awards or to substitute similar awards for those outstanding under the Plan, then with respect to Membership Unit Awards held by Participants whose Continuous Service has not terminated, the vesting of such Membership Unit Awards (and, if applicable, the time during which such Membership Unit Awards may be exercised) shall be accelerated in full, and the Membership Unit Awards shall terminate if not exercised (if applicable) at or prior to such event. With respect to any other Membership Unit Awards outstanding under the Plan, such Membership Unit Awards shall terminate if not exercised (if applicable) prior to such event.

(d) Change in Control--Change in Incumbent Board. In the event that the individuals who, as of the date of the adoption of this Plan, are members of the Board (the "Incumbent Board"), cease for any reason to constitute at least fifty percent (50%) of the Board, then with respect to Membership Unit Awards held by persons whose Continuous Service has not terminated, the vesting of such Membership Unit Awards (and, if applicable, the time during which such Membership Unit Awards may be exercised) shall be accelerated in full. If the election, or nomination for election, by the Company's members of any new Manager was approved by a vote of at least fifty percent (50%) of the Incumbent Board, such new Manager shall be considered as a member of the Incumbent Board.

12. AMENDMENT OF THE PLAN AND MEMBERSHIP UNIT AWARDS.

(a) Amendment of Plan. The Board at any time, and from time to time, may amend the Plan.

(b) No Impairment of Rights. Rights under any Membership Unit Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

(c) Amendment of Membership Unit Awards. The Board at any time, and from time to time, may amend the terms of any one or more Membership Unit Awards; provided, however, that the rights under any Membership Unit Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

13. TERMINATION OR SUSPENSION OF THE PLAN.

(a) **Plan Term.** The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on the day before the tenth (10th) anniversary of the date the Plan is adopted by the Board or approved by the members of the Company, whichever is earlier. No Membership Unit Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **No Impairment of Rights.** Suspension or termination of the Plan shall not impair rights and obligations under any Membership Unit Award granted while the Plan is in effect except with the written consent of the Participant.

14. EFFECTIVE DATE OF PLAN.

The Plan shall become effective as determined by the Board.

15. CHOICE OF LAW.

All questions concerning the construction, validity and interpretation of this Plan shall be governed by the law of the State of Idaho, without regard to such state's conflict of laws rules.